

SENATE BILL 2528
By Herron

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 3, relative to day care services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-3-506(a), is amended by adding the following at the end of that subsection:

When, in the discretion of the commissioner, an applicant/licensee requires closer licensure monitoring, a restricted license may be issued to contain conditions pertaining to the specific needs or deficiencies of the applicant/licensee.

No child welfare agency may be issued a license without proof of insurance coverage adequate for protection of the children served, to include, at a minimum, coverage for facilities where children are present and vehicles used to transport children; provided that this requirement shall not apply to a child welfare agency that is under the direct management of an administrative department of the state, a county, a municipality or any combination of these three.

SECTION 2. Tennessee Code Annotated, Section 71-3-506(a), is further amended by deleting the words and numbers "ninety (90) days' notice" and by substituting instead the words "thirty (30) days' notice".

SECTION 3. Tennessee Code Annotated, Section 71-3-506(c), is amended by deleting that subsection in its entirety and by substituting instead the following:

(c)(1) When an application for a license has been denied, the agency may not reapply for a period of sixty (60) days from the date of the denial. If such license has been denied on two (2) occasions, the agency may not reapply for a period of six (6) months. If such license has been denied on three (3) or more occasions, the agency may not reapply for a period of twelve (12) months. The department may waive the time restrictions herein upon a showing by the agency to the satisfaction of the department that the agency has corrected the deficiencies that led to the denial.

(2) When an application for a license has been revoked, the agency may not reapply for a period of twelve (12) months. The department may waive the time restrictions herein upon a showing by the agency to the satisfaction of the department that the agency has corrected the deficiencies that led to revocation and that such deficiencies are not likely to reoccur.

(3) When, in the discretion of the commissioner, an applicant whose license previously has been denied or revoked requires closer licensure monitoring, a restricted license may be issued to contain conditions pertaining to the specific needs or deficiencies of the applicant.

SECTION 4. Tennessee Code Annotated, Section 71-3-520(b), is amended by deleting the first sentence of subdivision (4) and by substituting instead the following:

(4) If the department determines that the agency has corrected the violation after being placed on probation, and that the agency meets all relevant licensure standards, the department shall remove the probationary status. The agency may then cease to post any notice of probation and may notify the custodian of the children in its care of its corrected status.

SECTION 5. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding a new section thereto, as follows:

(a)(1) In lieu of, or in addition to, taking any other licensing action pursuant to this part, the commissioner may seek injunctive relief against any child welfare agency in the county in which the agency is located to halt continued operation of the agency, whether or not any administrative proceedings are pending. The court of jurisdiction may grant injunctive relief when there is any violation of this part or the rules of the department that threatens serious harm to children in the child care agency, when a final order to deny or revoke a license has been violated, or when a licensed agency repeatedly violates the provisions of this part or rules of the department .

(2) In lieu of or in addition to any other licensing action pursuant to this part, the commissioner may assess a civil penalty against any agency in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a statute, rule or order pertaining to such agency. Each day of continued violation constitutes a separate violation.

(b) The department shall by rule establish a schedule designating the minimum and maximum civil penalties which may be assessed under this section. In assessing civil penalties, the following factors may be considered:

- (1) The severity of the violation, any harm that actually occurred and the risk of harm to the children or families served or to the public;
- (2) The circumstances leading to the violation;
- (3) Whether the amount imposed will be a substantial economic deterrent to the violator;
- (4) The economic benefits, if any, gained by the violator as a result of noncompliance; and
- (5) The interest of the public.

(c)(1) Civil penalties assessed pursuant to this section shall become final thirty (30) days after the date a final order of assessment is served unless a written request for a hearing before the board of review is made within ten (10) days of the mailing of the notice of assessment.

(2) If the violator fails to pay an assessment when it becomes final, the division may apply to the appropriate court for a judgment and seek execution of such judgment.

(3) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson County, or the chancery court of the county in which all or part of the violations occurred.

(d) All sums recovered pursuant to this section shall be paid into the state treasury, but shall be earmarked for and dedicated to the department. Such sums shall be used exclusively by the department to improve child care quality in this state.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.